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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WESTCHESTER BUILDING COMPANY, LLC,

Plaintiff,

-against-

Case No. 07 CIV 7912

COMPLAINT

AMERIQUEST MORTGAGE COMPANY,

Defendant.

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Plaintiff WESTCHESTER BUILDING COMPANY, LLC, by and through its attorneys, ITKOWITZ & HARWOOD, as and for their complaint as against Defendant AMERIQUEST MORTGAGE COMPANY, hereby allege as follows:

1. At all relevant times herein, Plaintiff WESTCHESTER BUILDING COMPANY, LLC ("Westchester Building Company" or "Plaintiff") is a limited liability company with a principal place of business at 750 Lexington Avenue, in the city of New York, State of New York.

2. At all relevant times herein, Defendant AMERIQUEST MORTGAGE COMPANY ("Ameriquest" or "Defendant") is a corporation incorporated in the state of Delaware with a principal place of business in the city of Orange, State of California.

3. At all relevant times herein, Westchester Building Company is comprised of only two members, Charles S. Cohen and Sherman Cohen.

4. At all relevant times herein, Charles S. Cohen is domiciled in the State of New York, with a fixed, permanent and principal home in the City of New York, State of New York at 465 Park Avenue, and has a primary address of business located at 750 Lexington Avenue, New York, New York 10022. Therefore, Charles S. Cohen, as a member of Westchester Building Company, is a citizen of the State of New York.

5. At all relevant times herein, Sherman Cohen is domiciled in the State of New York, with a fixed, permanent and principal home in the City of New York, State of New York at 778 Fifth Avenue, and has a primary address of business located at 750 Lexington Avenue, New York, New York 10022. Therefore, Sherman Cohen, as a member of Westchester Building Company, is a citizen of the State of New York.

6. At all relevant times herein, because both of the members of Westchester Building Company are citizens of the State of New York, Westchester Building Company is also a citizen of the State of New York.

7. At all relevant times herein, Defendant is a citizen of the State of California.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 by virtue of the diversity of citizenship as between Plaintiff and

Defendant, whose citizenships are New York and California respectively, and the amount in controversy which exceeds, exclusive of interest and costs, the sum or value of seventy-five thousand dollars (\$75,000.00).

9. Plaintiff is the owner and landlord of the building located at 333 Westchester Avenue, White Plains, New York 10605 (the "Building").

10. By written agreement of a Lease made as of February 18, 2003, as amended by First Amendment of Lease dated July 30, 2003, as further amended by Second Amendment of Lease dated July 30, 2003, and as further amended by Third Amendment of Lease dated July 30, 2003 (collectively referred to as the "Lease"; copy annexed hereto as Ex. "1"), Plaintiff, as Landlord, leased the Entire Ground, 1<sup>st</sup> and 2<sup>nd</sup> Floor and Entire Terrace Level in the North Building, and Entire Ground Floor and Entire 2<sup>nd</sup> Floor in the East Building of the Building (the "Premises") to Defendant, as Tenant, for a term of approximately six (6) years and six (6) months, ending on October 31, 2009.

11. Pursuant to the Lease, Defendant is obligated to Plaintiff for all base and additional rent and other charges payable by Tenant, for so long as Defendant is in possession of the Premises.

12. Defendant violated its obligations pursuant to the Lease by failing to pay base rent and additional rent

for the months of July, August, and September 2007, in the total amount of One Million Nine Hundred Fifty Two Thousand Seven Hundred Eleven Dollars and Sixty Five Cents (\$1,952,711.65) by the 1<sup>st</sup> day of September, 2007.

13. As of September 2007, Defendant is indebted to Plaintiff, in the total amount of \$1,952,711.65, as follows:

- a. Base Rent for month of July 2007, in the amount of \$84,333.33;
- b. Base Rent for month of July 2007, in the amount of \$85,770.83;
- c. Base Rent for month of July 2007, in the amount of \$56,062.50;
- d. Base Rent for month of July 2007, in the amount of \$44,206.00;
- e. Base Rent for month of July 2007, in the amount of \$57,034.25;
- f. Base Rent for month of July 2007, in the amount of \$74,571.75;
- g. Electric charges, from May 7, 2007 to June 6, 2007, due July 2007, in the amount of \$6,249.35;
- h. Electric charges, from May 7, 2007 to June 6, 2007, due July 2007, in the amount of \$1,289.62;

i. Electric charges, from May 7, 2007 to June 6, 2007, due July 2007, in the amount of \$803.77;

j. Electric charges, from May 7, 2007 to June 6, 2007, due July 2007, in the amount of \$2,375.48;

k. Real Estate Tax, 1<sup>st</sup> Half from July 1, 2007 to December 31, 2007, due July 2007, in the amount of \$25,580.05;

l. Real Estate Tax, 1<sup>st</sup> Half from July 1, 2007 to December 31, 2007, due July 2007, in the amount of \$26,017.80;

m. Real Estate Tax, 1<sup>st</sup> Half from July 1, 2007 to December 31, 2007, due July 2007, in the amount of \$17,008.96;

n. Real Estate Tax, 1<sup>st</sup> Half from July 1, 2007 to December 31, 2007, due July 2007, in the amount of \$13,414.93;

o. Real Estate Tax, 1<sup>st</sup> Half from July 1, 2007 to December 31, 2007, due July 2007, in the amount of \$17,332.51;

p. Real Estate Tax, 1<sup>st</sup> Half from July 1, 2007 to December 31, 2007, due July 2007, in the amount of \$22,620.45;

q. Operating Expense 2004 Settle-Up, due

July 2007, in the amount of \$33,926.61;

r. Operating Expense 2004 Settle-Up, due July 2007, in the amount of \$34,515.91;

s. Operating Expense 2004 Settle-Up, due July 2007, in the amount of \$22,561.62;

t. Operating Expense 2004 Settle-Up, due July 2007, in the amount of \$17,834.62;

u. Operating Expense 2004 Settle-Up, due July 2007, in the amount of \$22,999.38;

v. Operating Expense 2004 Settle-Up, due July 2007, in the amount of \$30,016.21;

w. Operating Expense 2005 Settle-Up, due July 2007, in the amount of \$58,183.99;

x. Operating Expense 2005 Settle-Up, due July 2007, in the amount of \$59,194.63;

y. Operating Expense 2005 Settle-Up, due July 2007, in the amount of \$38,693.07;

z. Operating Expense 2005 Settle-Up, due July 2007, in the amount of \$30,586.30;

aa. Operating Expense 2005 Settle-Up, due July 2007, in the amount of \$39,443.83;

bb. Operating Expense 2005 Settle-Up, due July 2007, in the amount of \$51,477.67;

cc. Operating Expense 2006 Settle-Up, due July 2007, in the amount of \$15,690.87;

dd. Operating Expense 2006 Settle-Up, due July 2007, in the amount of \$15,963.42;

ee. Operating Expense 2006 Settle-Up, due July 2007, in the amount of \$10,434.63;

ff. Operating Expense 2006 Settle-Up, due July 2007, in the amount of \$8,248.42;

gg. Operating Expense 2006 Settle-Up, due July 2007, in the amount of \$10,637.09;

hh. Operating Expense 2006 Settle-Up, due July 2007, in the amount of \$13,882.33;

ii. 2007 Operating Expense Estimate for January 2007 to July 2007, due July 2007, in the amount of \$9,610.66;

jj. 2007 Operating Expense Estimate for January 2007 to July 2007, due July 2007, in the amount of \$9,777.59;

kk. 2007 Operating Expense Estimate for January 2007 to July 2007, due July 2007, in the amount of \$6,391.21;

ll. 2007 Operating Expense Estimate for January 2007 to July 2007, due July 2007, in the amount of \$5,052.15;

mm. 2007 Operating Expense Estimate for January 2007 to July 2007, due July 2007, in the amount of \$6,515.22;

nn. 2007 Operating Expense Estimate for January 2007 to July 2007, due July 2007, in the amount of \$8,502.93;

oo. Base Rent for month of August 2007, in the amount of \$84,333.33;

pp. Base Rent for month of August 2007, in the amount of \$85,770.83;

qq. Base Rent for month of August 2007, in the amount of \$56,062.50;

rr. Base Rent for month of August 2007, in the amount of \$44,206.00;

ss. Base Rent for month of August 2007, in the amount of \$57,034.25;

tt. Base Rent for month of August 2007, in the amount of \$74,571.75;

uu. Electric charges, from June 6, 2007 to July 6, 2007, due August 2007, in the amount of \$6,529.20;

vv. Electric charges, from June 6, 2007 to July 6, 2007, due August 2007, in the amount of \$1,418.41;

ww. Electric charges, from June 6, 2007 to July 6, 2007, due August 2007, in the amount of \$519.27;

xx. Electric charges, from June 6, 2007 to

July 6, 2007, due August 2007, in the amount of \$2,650.38;

yy. Operating Expense Escalation, due August 2007, in the amount of \$1,372.95;

zz. Operating Expense Escalation, due August 2007, in the amount of \$1,396.80;

aaa. Operating Expense Escalation, due August 2007, in the amount of \$913.03;

bbb. Operating Expense Escalation, due August 2007, in the amount of \$721.74;

ccc. Operating Expense Escalation, due August 2007, in the amount of \$930.75;

ddd. Operating Expense Escalation, due August 2007, in the amount of \$1,214.70;

eee. Base rent for the month of September 2007, in the amount of \$84,333.33;

fff. Base rent for the month of September 2007, in the amount of \$85,770.83;

ggg. Base rent for the month of September 2007, in the amount of \$56,062.50;

hhh. Base rent for the month of September 2007, in the amount of \$44,206.00;

iii. Base rent for the month of September 2007, in the amount of \$57,034.25;

jjj. Base rent for the month of September

2007, in the amount of \$74,571.75;

kkk. Operating Expense September 2007, due September 2007, in the amount of \$1,372.95;

lll. Operating Expense September 2007, due September 2007, in the amount of \$1,396.80;

mmm. Operating Expense September 2007, due September 2007, in the amount of \$913.03;

nnn. Operating Expense September 2007, due September 2007, in the amount of \$721.74;

ooo. Operating Expense September 2007, due September 2007, in the amount of \$930.75;

ppp. Operating Expense September 2007, due September 2007, in the amount of \$1,214.70;

qqq. Electric charges, from July 6, 2007 to August 6, 2007, due September 2007, in the amount of \$5,884.49;

rrr. Electric charges, from August 7, 2007 to September 6, 2007, due September 2007, in the amount of \$8,796.53;

sss. Electric charges, from July 6, 2007 to August 6, 2007, due September 2007, in the amount of \$1,571.65;

ttt. Electric charges, from August 7, 2007 to September 6, 2007, due September 2007, in the amount of \$3,857.65;

uuu. Electric charges, from July 6, 2007 to August 6, 2007, due September 2007, in the amount of \$627.26;

vvv. Electric charges, from August 7, 2007 to September 6, 2007, due September 2007, in the amount of \$1,537.67;

www. Electric charges, from July 6, 2007 to August 6, 2007, due September 2007, in the amount of \$2,553.64;

xxx. Electric charges, from August 7, 2007 to September 6, 2007, due September 2007, in the amount of \$4,896.30.

**AS AND FOR A FIRST CAUSE OF ACTION**

14. Plaintiff repeats and realleges all of the allegations set forth in paragraphs "1" through "13" as if fully set forth below.

15. Defendant breached its Lease with Plaintiff by defaulting in the payment of base rent and additional rent as required by the Lease, for the months of July, August, and September 2007.

16. Defendant's breach of the Lease due to its refusal to pay base rent and additional rent has caused damages to Plaintiff in the form of unpaid and/or lost rents.

17. Plaintiff, itself, has fully performed and fulfilled all of its obligations under the parties' Lease.

18. There is currently due to Plaintiff an amount of \$1,952,711.65 in unpaid and/or lost for the months of July, August and September 2007, which amount continues to remain unpaid.

19. Based upon the foregoing, Plaintiff is entitled to entry of a money judgment in favor of Plaintiff, and against Defendant, in the amount of \$1,952,711.65, representing base rent and additional rent for July, August, and September 2007, plus interest, allowable attorneys' fees and costs and disbursements of this action.

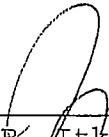
WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- (a) On the first cause of action, a money judgment in favor of Plaintiff and against Defendant in the amount of \$1,952,711.65, including interest, allowable attorneys' fees and costs and disbursements of this action; and,
- (b) granting Plaintiff such other and further relief as to this Court seems just and proper.

Dated: New York, New York  
September 7, 2007

ITKOWITZ & HARWOOD  
Attorneys for Plaintiff  
WESTCHESTER BUILDING COMPANY, LLC

By:

  
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